

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532640001 (Enf. Bur., Norfolk Office, February 25, 2005) (“NAL”).

the *NAL* requesting a reduction of the proposed forfeiture.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,³ Section 1.80 of the Commission's Rules ("Rules"),⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining WBLT's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

5. Section 17.4(a) of the Rules states that the owner of any proposed or existing antenna structure that requires notice of proposed construction to the FAA must register the structure with the Commission.⁶ WBLT admitted during the inspection on February 27, 2004 and in its response that it did not register its antenna structure prior to the agent's inspection. On March 1, 2004, WBLT obtained registration number 1242296 for its antenna structure. Thus, based on the evidence, we find that WBLT willfully⁷ and repeatedly⁸ violated Section 17.4(a) of the Rules by failing to register its antenna structure.

6. WBLT asserts the proposed forfeiture should be reduced because it registered its antenna structure within two days of the agent's inspection. However, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.⁹ Further, we note that WBLT was required to register its tower when it acquired the tower in 2002. WBLT also requests a reduction, because it believes it is irrational to impose the same forfeiture on small and large violators for a particular violation. WBLT, however, explicitly states that it does not seek a reduction based on inability to pay. Assessing forfeitures based on Section 503(b) of the Act, Section 1.80 of the Rules and the *Forfeiture Policy Statement* is rational, because it imposes a consistent, fair, and predictable system for entities that do business with the Commission. We do not find it appropriate to reduce a forfeiture simply because WBLT claims it is a "relatively minimal operation." Finally, we reject WBLT's request to reduce the proposed forfeiture based on its history of compliance with the Rules. According to Commission records, WBLT failed to submit a license renewal application in a timely fashion during the renewal cycle, *e.g.*, prior to October 1, 2003, in apparent violation of Section 73.3539

³47 U.S.C. § 503(b).

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

⁶47 C.F.R. § 17.4(a).

⁷Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁹See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

of the Rules. WBLT submitted its license renewal application after it was contacted by the Media Bureau that its license had expired. Accordingly, we conclude that WBLT does not have a history of compliance with the Rules and is not entitled to receive a reduction on those grounds.

7. We have examined WBLT's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that WBLT willfully and repeatedly violated Section 17.4(a) of the Rules. We find no basis for cancellation or reduction of the \$3,000 forfeiture proposed for these violations.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹⁰ WBLT, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand hundred dollars (\$3,000) for willfully and repeatedly violating Section 17.4(a) of the Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to WBLT, Inc. at its address of record and its counsel, Peter Gutmann, Womble, Carlyle, Sandridge & Rice, PLLC, 1401 Eye Street, NW, Seventh Floor, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹⁰47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹¹47 U.S.C. § 504(a).

¹²See 47 C.F.R. § 1.1914.